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AMENDED SIXTY DAY NOTICE OF INTENT TO SUE SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; AND EXXON MOBIL CORPORATION FOR VIOLATIONS OF HEALTH & SAFETY CODE SECTIONS 25249.5 AND 25249.6

This Amended Sixty Day Notice of Intent to Sue Under Health & Safety Code § 25249.5 and § 25249.6 ("the Notice") is given by the Consumer Defense Group Action ("the Noticing Party" or "CDGA") to the Chairman and CEO of each of the entities referenced above (hereinafter referred to collectively as "the Violators"), as well as the entities on the attached proof of service. The name and address of the Chairman and CEO of each of the Violators is provided on the attached Proof of Service. The relevant person inside the Noticing Party for purposes of this Notice is Brian Fagan, President of CDGA, who may be contacted at the following address: Brian Fagan, President of CDGA, Attn: Anthony G. Graham, of Graham & Martin, LLP, 950 South Coast Drive, Suite 220, Costa Mesa, California 92626, telephone number (714) 850-9390, facsimile number (714) 850-9392. This Amended Notice constitutes notification that the Violators have violated The Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") and that the Noticing Party intends to file suit after the expiration of sixty days from the date of this Notice.

SUMMARY OF VIOLATIONS

Proposition 65 provides that when parties, such as the Violators, have been and are knowingly and intentionally releasing or threatening to "release chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water", they are in violation of Health & Safety Code Section 25249.5. The term "release" is defined by Health & Safety Code section 25320 ["'Release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"]. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties. Proposition 65 also provides that when parties, such as the Violators, have been and are knowingly and intentionally exposing the public and/or its employees to chemicals designated by the State of California to cause cancer and/or reproductive toxicity ("the Designated Chemicals") they have violated Health & Safety Code Section 25249.6 unless, prior to such exposure, they provide clear and reasonable warning of that potential exposure to the potentially exposed persons. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties.

THE FACTUAL BASIS FOR THIS AMENDED NOTICE

THE SITE

The Violators have violated, threaten to violate and continue to violate both sections of the Health & Safety Code at the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646 ("the Site"). The Site is surrounded by residential housing, schools, a park, a senior citizens center and commercial property.

The Site consists of approximately 38 acres, and is bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west. It is identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial, recreational and residential area; a community park (Edison Community Park) and a high school (Edison High School) are located directly across the street from the Site.

The Site consists of historic disposal areas, comprising former disposal pits, current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit (Pit F), containing styrene waste and other waste, located in the southeast corner of the Site. Although the Site is fenced, the California Environmental Protection Agency ("CEPA") and DTSC have noted that there is evidence that trespassers have obtained access to the Site on a number of occasions. Investigators for the Noticing Party have noted, in December 12, 2002, June 4, 2003, as well as in October 14, 2004 and November 11, 2005, that there are and have beaten pathways leading directly from the various breaks in the chain link fence surrounding the Site obviously suggesting that the Site is regularly "visited" by trespassers. In fact, DTSC have reported that one trespasser was found to have been living on the Site near one of the Pits.

THE VIOLATORS

One of the business activities the Violators engage in, on a regular and ongoing basis, is to clean up former landfill sites which they have contaminated by the illegal disposal of hazardous substances. At such sites the Violators are under a duty pursuant to Proposition 65 to not, by their own acts or omissions, allow the actual and threatened "release" of Designated Chemicals from the site, as well as to provide a clear and reasonable warning to persons at or near the Site of potential "exposures" to Designated Chemicals affecting such onsite and offsite persons.

Each of the Violators formerly contaminated the Site by illegally disposing and dumping hazardous substances at the Site, including Designated Chemicals. CDGA is in possession of a number of declarations from employees/contractors for the Violators who have admitted illegally dumping toxic chemicals at the Site on behalf of the Violators over the course of many years. Those declarations make clear that each of the Violators over a course of years systematically

illegally dumped chemicals at the Site, including Designated Chemicals. The declarations have already been served on the Violators and provided to the Office of the Attorney General. In addition, each of the Violators is a Responsible Party, as that term is defined by the Department of Toxic Substances Control ("DTSC") and each of the Violators is currently responsible for the clean up and remediation of the toxic mess they made. At the Ascon Site therefore the Violators are not only the entities which illegally dumped the Designated Chemicals but are also the parties responsible for the remediation at the Site.

As "remediators", the Violators are currently operating at the Site and have a duty under Proposition 65 to prevent the actual and threatened "release" of Designated Chemicals (that they had formerly illegally dumped) from the contained areas at the Site. The contained areas at the Site are the Pits and lagoons located there which are bounded by berms which are designed to effectively prevent discharges and releases from those areas during heavy rains. The Violators are also under a duty pursuant to Proposition 65 to prevent and/or provide a clear and reasonable warning about potential "exposures" to Designated Chemicals affecting both onsite and offsite persons. The Violators have been and are failing in those duties under Proposition 65.

First, the Pits and lagoons at the Site are and have been for a number of years surrounded by berms which are intended to and formerly did effectively contain the toxic chemicals contained in those Pits and lagoons and thus prevented their discharge and release out of the Pits and lagoons during heavy rains. However, as would be obvious to anyone, the berms must be maintained and repaired when necessary so that the Designated Chemicals remained safely contained by those berms and so that no discharges or releases can occur through those berms. The Violators have been specifically and repeatedly warned both by the DTSC and by CDGA of the consequences of their refusal to properly and appropriately maintain and repair the berms. As to CDGA these warnings took the form of prior Sixty Day Notices as well as filed complaints.

Despite these specific warnings, and thus with full knowledge of the effect of their failure to responsibly act, the Violators failed to properly maintain or repair the berms, even when cracks appeared in the berms and they were informed of such by their own contractors, the DTSC and later CDGA. As a result of their knowing and intentional failure to act the Violators allowed the berms at the Site to collapse, not once, but twice, between December, 2004 and May 2005. The collapse of the berms resulted in specific releases/discharges of toxic chemicals, including Designated Chemicals, from the Site into or onto the land both onsite and offsite where such chemicals pass or probably will pass into a source of drinking water, as well as into the surrounding streets and neighborhood where the Site is located from December, 2004 - May, 2005. There is now and continues to be an ongoing risk of further collapse of the berms as well as overflow and discharge from the pits as a result of the berm collapse or fracture, or by reason of rainfall overflowing the pits.

Second, the Violators knew that there were and are oil wells at the Site, some of which had been abandoned. The Violators, because of the nature of their primary business, knew that abandoned oil wells must be properly maintained or there would be a very strong likelihood of explosion. Despite knowing that the oil wells were at the Site, that they were old oil wells which did not have modern "caps", the Violators failed and refused to properly (or in fact in any way)

maintain those oil wells in a safe manner. As an obvious and inevitable result of the Violators failure to effectively maintain, repair or otherwise render safe those oil wells the Violators knowingly and intentionally created a substantial risk that one of the oil wells would fail and a discharge/release would occur. That is precisely what happened on March 17, 2004, when one of the oil wells exploded and released hundreds of gallons of toxic material over the homes, property and persons in the neighborhood around the Site causing hundreds of thousands of dollars of damage. Prior to the explosion the toxic chemicals had been effectively contained in the oil well, since there is no evidence of any prior release or discharge therefrom of which CDGA or the DTSC is aware. There is now and continues to be an ongoing risk of further explosive discharges from abandoned oil wells at the Site and such risk will continue until such time as the oil wells are properly capped or otherwise rendered safe.

Since the Violators, as the parties who illegally dumped the toxic chemicals and who are also currently legally obligated as remediators at the Site, are responsible for the current dangerous condition of the Site, they are under a current duty pursuant to Health & Safety Code §25249.5 *et seq* to ensure that the Site is operated in such a manner as to ensure (i) that there are no new discharges or releases of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to Designated Chemicals. The Violators have been and are fulfilling neither of those duties.

THE HEALTH RISK

A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site, specifically found that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and dermal contact with contaminants in the soil. Each of the Violators knew of the BHRA and thus knew and knows that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies.

Despite this knowledge the Violators did not have in place any clear and reasonable warning and did not even consider posting a warning sign until **after** receipt of CDGA's initial Notices. The warning signs which were thereafter put in place were specifically put in place in response to CDGA's initial notices. This fact is made clear in the written minutes of a meeting between the Violators in which CDGA's former Notice is discussed and the decision is made to consider putting in place Proposition 65 warnings. Any warnings currently in place at the Site are therefore as a result of the work of CDGA and its counsel. However, even the warning signs which are now in place are still insufficient since they only warn persons at the Site not persons in the surrounding residential neighborhood, park, senior citizens center or school.

The Violators thus knew and know that the families who live in the residential neighborhood, the schoolchildren who attend Edison High School, the senior citizens who use the Senior Citizens Center, the workers at the Site, trespassers on the Site (at least one of whom actually lived on Site next to one of the toxic lagoons for some period of time), as well as assorted passersby, can and are exposed to the chemicals off-site when they breathe such chemical fumes after volatilization, or when they touch the soil contaminated by the discharges from the pits and lagoons which happen during heavy rains, or when the berms collapsed twice in the period from December, 2004 - May, 2005, or when an oil well on site explodes. The original Sixty Day Notice sent to the Violators expressly warned that the berms could collapse and the dangerous exposures likely to then occur. The Violators ignored that warning, as well as the warning contained in the first complaint filed by the Noticing Party. The Violators also ignored warnings to them from DTSC regarding the berms and the oil wells.

THE DESIGNATED CHEMICALS

Metals detected at the Site, greater than typical background concentrations, include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds, chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and cadmium compounds are Designated Chemicals known to the State of California to cause cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury compounds are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure.

Pesticides detected at the Site include lindane and chlordane. Lindane and lindane compounds and chlordane are Designated Chemicals known to the State of California to cause cancer. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Semi-volatile organic compounds ("SVOCS") detected at the Site include benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene, naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated Chemical known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Volatile organic compounds ("VOCS") detected at the Site include benzene, toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and dichloroethane are Designated Chemicals known to the State of California to cause cancer. Benzene and toluene are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

THE ROUTES OF EXPOSURE

The route of exposure for the chemicals noted herein is as follows: volatile waste components present in the lagoons and Pit F may volatilize from the surface and disperse in the atmosphere which may cause exposure to people both onsite and offsite via inhalation. Moreover, disturbance of the lagoons or pit will result in the release of vapors or hazardous particulates into the atmosphere where persons may inhale or ingest such substances. Moreover, though the Site is fenced, the Violators have admitted that trespassers are regularly onsite and there is therefore a potential for direct contact with

contaminated soils and accumulated contaminated runoff by persons either legally at the Site (such as investigators or site workers) or by trespassers. Further, the lagoons and Pits, which had been effectively contained by the berms, have, after the Violators knowingly and intentionally allowed those berms to collapse, overflowed during heavy rains causing overflow of toxic chemicals to run down the streets offsite. Rainwater runoff which has come into contact with contaminated soils on the Site of course inevitably leads to offsite contamination by direct contact with persons in the area. In addition, dozens of persons in the neighborhood have, during the course of 2006, complained to the Violators and DTSC about the strong chemical odors emanating from the Site and being breathed in by those persons, as well as about chemical runoff from the Site to the neighboring streets during rains. .

The Designated Chemicals that were illegally disposed of at the Site by the Violators have, because of the Violators knowing and intentional failure to act on the warnings given to it which inevitably allowed the berms to collapse and the oil well to explode, passed into and will continue to pass into the soil and groundwater beneath and adjacent to the Site. Moreover, as has been noted by the DTSC, persons in the area have been and will be exposed to groundwater contaminated by those hazardous substances, including Designated Chemicals, whenever groundwater is "pumped for use or if discharged into a surface water body". Further, there exists the potential for future passage of the waste materials from the Site to the wetlands through the unlined Huntington Beach flood control channel that currently passes the westerly edge of the Site and flows through the Talbert Marsh wetland.

Based on all of the facts known to the Noticing Party at this time, the Violators have violated Health & Safety Code § 25249.5 since they have, "in the course of doing business", "knowingly and intentionally released chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in § 25249.9." They have done so by failing to act on specific warnings and knowledge they had during the period when they have control of the Site, they are responsible for remediating the Site, and when such action would have allowed the continued effective containment at the Site of the Designated Chemicals they illegally dumped at the Site. Upon filing of the Complaint relating to this violation, the Noticing Party will seek an injunction pursuant to Health & Safety Code § 25249.7 requiring that the Violators immediately take effective action to safely contain the Designated Chemicals at the Site so as to prevent further actual or potential releases, until such time as the clean up required by the Consent Order is completed, pursuant to Health & Safety Code § 25249.7. The Noticing Party will also seek civil penalties against the Violators for their past and ongoing violations of Health & Safety Code § 25249.5 as well as reimbursement of its legal fees and costs.

The Violators have also violated Health & Safety Code § 25249.6 since they have, "in the course of doing business", "knowingly and intentionally expose[d] [persons] to a chemical known to the State of California to cause cancer or reproductive toxicity without first giving [a] clear and reasonable warning." Prior to the initial notices sent to the Violators by CDGA there were no warnings concerning Proposition 65 at the Site perimeter. Since the initial notices and specifically in response thereto the Violators have placed warning signs which reference Proposition 65 on the Site perimeter fence. However, these warnings are insufficient to provide a clear and reasonable warning to the local residents living in the area, the children and personnel (teachers, administrators, security and other personnel) at the high school or the users of the local park located next to the Site that physical proximity to the Site may expose them to Designated Chemicals. Upon filing of the Complaint relating to this violation the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to inform all likely affected persons of the likely exposures to Designated Chemicals in a clear and

reasonable manner. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code Section 25249.6.

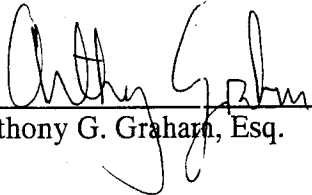
With this Notice the Noticing Party has also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

If you have any questions or comments, please do not hesitate to contact the undersigned at your earliest convenience.

Dated: April 15, 2008

GRAHAM & MARTIN, LLP

By:



Anthony G. Graham, Esq.

cc. Attached Service List

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing Consumer Defense Group Action, the "Noticing Party" as to the "Amended 60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

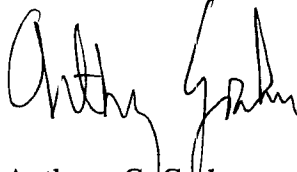
3. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus “operates”, the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the “release” of the chemicals set forth in the Notice and such “releases” have passed or threaten to pass into any source of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Costa Mesa, California on April 15, 2008.



Anthony G. Graham

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 950 South Coast Drive, Suite 2030, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

- 1.) Amended Sixty Day Notice of Intent to Sue Under Health & Safety Code Sections 24249.5 and 25249.6;
- 2.) Certificate of Merit;
- 3.) Copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" (*sent only to Violators*);
- 4.) Supporting Documents (*sent only to Office of Attorney General*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: April 15, 2008

Place of Mailing: Costa Mesa, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 15, 2008

